

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ANTHONY M. PATERNOSTER	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO. 07-446 (SLR)
	:	
SUPERVALU, INC. d/b/a ACME	:	
MARKETS, INC. and ACME	:	
MARKETS INC.	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	

DEFENDANTS' REPLY IN
SUPPORT OF THEIR MOTION TO TRANSFER VENUE

Dated: March 5, 2008

BUCHANAN INGERSOLL & ROONEY PC
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I. INTRODUCTION

Defendants SUPERVALU INC. d/b/a/ Acme Markets, Inc. ("SUPERVALU") and Acme Markets, Inc. ("Acme") file this Reply in Support of Their Motion to Transfer Venue from the United States District Court for the District of Delaware to the United States District Court for the Eastern District of Pennsylvania, Philadelphia Vicinage.

II. ARGUMENT

A. Plaintiff Has Waived the Opportunity to Respond

Defendants filed and served their Motion and supporting papers on January 10, 2008. Plaintiff's response was due on January 28, 2008. *See* D.I. #8. To date, Plaintiff has not filed a response to Defendants' Motion and, therefore, has waived the opportunity to do so.

B. This Matter Should Be Transferred to the Eastern District of Pennsylvania

As set forth fully in Defendants' Memorandum of Points and Authorities in Support of Their Motion to Transfer Venue, the venue of this matter should be transferred for two reasons. First, venue should be transferred pursuant to 28 U.S.C. § 1406(a) because venue is improper in the District of Delaware, and proper in the Eastern District of Pennsylvania, pursuant to the venue requirements of the ADA. Second, venue should be transferred pursuant to 28 U.S.C. § 1404(a) because the Eastern District of Pennsylvania is a substantially more convenient venue for this matter than the District of Delaware, and litigating Plaintiff's claims in the District of Delaware would impose an unusual burden on the Defendants.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion to Transfer Venue to the United States District Court for the Eastern District of Pennsylvania, Philadelphia Vicinage pursuant to 28 U.S.C. § 1406(a) and/or 28 U.S.C. § 1404(a).

In addition, because Plaintiff has failed to even address Defendants' arguments with a response, Defendants respectfully request their attorneys' fees and costs incurred in having to file their Motion.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

BY: /s/ Jennifer Becnel-Guzzo
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MARKETS INC.	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	

CERTIFICATE OF SERVICE

I, Jennifer M. Becnel-Guzzo , do hereby certify that on this 5th day of March, 2008, I electronically filed Defendants' Reply in Support of Their Motion to Transfer Venue, using CM/ECF and also served two copies, via first class mail, postage prepaid, to:

Herbert G. Feuerhake, Esquire
521 West Street
Wilmington, DE 19801

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